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48-1047
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OGC HAS REVIEWED.

19 November 1951

25X1

MEMORANDUM FOR

SUBJECT: Armed Services Procurement Act of 1947

1. The sections you inquired about read as follows:

"Sec. 2(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 3, except that such purchases and contracts may be negotiated by the agency head without advertising if --

- ...
- (12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed; ..
 - (15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition; Provided, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier:..."

"Sec. 5(a) The agency head may make advance payments under negotiated contracts heretofore or hereafter executed in any amount not exceeding the contract price upon such terms as the parties shall agree: Provided, That advance payments shall be made only upon adequate security and if the agency head determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract.

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2. These requirements have caused little difficulty to date, but we have recently considered with procurement whether we need any legislative changes. At present it appears that we have sufficient freedom to do what we need without unnecessary administrative burdens. As you probably know, the above provisions apply only to contracts on vouchered funds, subject to GAO review. These contracts may be classified or unclassified.

FOIAB5



LAWRENCE R. HOUSTON
General Counsel

GC/LRH/McD

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REMARKS: as you know the Head
of the Agency for purposes of
this paper is defined as
the Director, Deputy Director
or Executive. Therefore [redacted]
can act as Head.

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